

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3044 OF 2007**

Pandharinath Sakharam Choudhari ..Petitioner.
Vs.

1. State of Maharashtra
2. The Hon'ble Minister (Home)
Mantralay, Mumbai
3. The Commissioner of Police
Nashik, Dist. Nashik ..Respondents.

Mr.S.K.Shinde i/b Vinod Shah, adv. for the Petitioner.

Ms.V.S.Mhaispurkar, A.G.P. for the Respondent Nos.1 & 3.

**CORAM : J.H.BHATIA, J.
DATE : JULY 20, 2007.**

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and with consent of the counsel for both the parties, the petition is taken up for final hearing immediately.

2. Heard the learned counsel for both the parties.

3. Petitioner was granted a licence by the District Magistrate, Nashik for running a lodging house in the name and style as 'Swagat Lodge' at Nashik. The said licence was cancelled by the police commissioner by an order dated 7/14th February, 2005. As per the said order, on 25-8-2004 at 19.05 hours, the said lodge was raided by the police. At that time, the petitioner was

not present and the lodge was being run by Vilas Vinayak Salve and Sharad Patil. They were using the lodge for the purpose of prostitution. At the time of raid, eight women and five men were present and the business of prostitution was going on. In view of this, the offence under the Immoral Traffic (Prevention) Act, 1956 came to be registered. After registration of the said offence, the notice dated 6.12.2004 was issued to the present petitioner contending that he had allowed Vilas Vinayak Salve and Sharad N. Patil to run the lodge in violation of the terms and conditions of the license and he was called upon to show cause as to why his license should not be cancelled. Petitioner submitted his reply to the said notice on 17-12-2004. After perusal of explanation given by the petitioner, the Police Commissioner came to conclusion that the explanation was not satisfactory. In the result, he passed the impugned order revoking the license issued in favour of the petitioner. This order was challenged by the petitioner before the Government and after hearing the petitioner, the learned Home Minister dismissed the appeal. Therefore, the petitioner has filed this petition.

4. The license came to be cancelled giving two reasons. Firstly, that he had committed breach of the

conditions of the license, which required the petitioner himself to be present and to run the lodge and not to allow any other person to run the lodge and the second allegation was that the person, who was allowed by the petitioner to run the lodge was booked for the offence punishable under Immoral Traffic (Prevention) Act, 1956. The learned counsel for the petitioner contended that merely because of registration of an offence, it can not be held that accused is guilty as long as the offence is not proved after trial. He contends that in view of this merely because an offence was registered under the Immoral Traffic (Prevention) Act, the licence could not be cancelled. In support of his contention, he placed reliance upon the judgment dated 12th October, 2006 in **Writ Petition No.5675 of 2006 Maruti Vitthal Gopale v. The State of Maharashtra & Anr.** rendered by Division Bench of this Court, which in turn had relied upon on earlier authority of this Court in **Writ Petition No.7271 of 1999 (Dilip J. Bhatia v. The Commissioner of Police, Thane)** dated 20th July, 2000, wherein following observations were made.

"This Court has held that pendency of prosecution cannot be a ground for refusing to renew a licence to carry on the said business. Principle underlying the said decision is that even if a criminal case is pending, that by itself cannot be a ground so long as the licence

holder himself or his agent or servant is convicted of the said offence. Our criminal jurisprudence recognises that until a person is tried and held guilty, he should be treated as innocent. Other decisions have also dealt with the same subject matter, which have been included in the writ petition compilation. I do not think that it is necessary for me to refer to each of the said decision as the consistent view of this Court has been that pendency of the criminal proceedings cannot be a ground for cancellation of licence. Accordingly, petition should succeed on this issue."

In view of the above observations made in **Dilip J. Bhatia v. The Commissioner of Police**, the Division Bench set aside the order about cancellation of lodging house. In that case, the allegation was that employees of the licensee had confined two minor girls for the purpose of prostitution and they were booked under the Immoral Traffic (Prevention) Act, 1956.

5. If in the present case also the only ground for cancellation or revocation of license would be registration of offence under the Immoral Traffic (Prevention) Act, 1956, this Court would be bound by the above two authorities and the petitioner could succeed. However, the main ground for cancellation of licence against the petitioner, besides the registration of offence against the sub-lessee, is that in violation of terms and conditions of the licence, he had allowed the third person to use licence to run the lodge. Admittedly, the licence for running a lodging

house was issued by the Additional District Magistrate under Section 33 (1)(w) of the Bombay Police Act, 1951. However, as now there is a police commissioner for city of Nashik, powers of District Magistrate are exercised by the police commissioner within the commissionerate area. The learned counsel for the petitioner pointed out that for breach of any conditions of licence, penalty can be imposed under Section 130(1)(v) and a fine may be imposed which may extend to Rs.500/-. According to him, there is no other punishment, which is provided for such breach. The learned Additional Government Pleader Ms.V.S.Mhaispurkar pointed out that the rules governing issue of licences make it clear that the licensing authority had also powers to revoke the license. Rules have been framed in this respect under Section 33(1)(w) of the Bombay Police Act. Rule 8 reads as follows:

"8. No person keeping a place of public entertainment shall absent himself therefrom during the time it is open without obtaining the previous permission of the District Magistrate to be endorsed on the licence and no such person shall at any time permit any other person to act for him in the management of such place without the like permission similarly endorsed."

6. Rules 20 and 21, which are relevant read as follows:

"20. The District Magistrate shall have the power in his discretion at any time to cancel a licence granted under these rules or to suspend it for such period as he may specify and to direct the keeper of any place of public entertainment to close such place either permanently or temporarily, or otherwise act with reference thereto in order to prevent any obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in the vicinity or to prevent disturbance in such place and every person keeping a place of public entertainment shall forthwith comply with such direction."

21. No licence granted under these rules shall be cancelled or suspended until the holder of a licence has been given a reasonable opportunity of showing cause why his licence should not be cancelled or suspended, as the case may be.

Provided that no such opportunity for showing cause shall be necessary when the licence is suspended for a temporary period pending an enquiry against the holder of the licence for contravention of any of these rules or any order made thereunder or of any of the conditions of the licence granted to him."

If these rules are read together, it becomes clear that no person, who is granted license for keeping a place of enjoyment or lodging house shall absent himself therefrom during the time it is open without obtaining previous permission of the District Magistrate and such licensee shall not permit any other person to act for him in the management of such place without prior permission similarly endorsed from the District Magistrate. As now there is police commissioner vested with powers of District Magistrate, this permission

will have to be obtained from the police commissioner. Under Rule 20, licence can be cancelled by the police commissioner. However, in view of the Rule 21, no license can be cancelled or suspended unless the holder of the license is given reasonable opportunity to show cause why the licence should not be cancelled or suspended as the case may be. In the present case, before the license was cancelled, show-cause notice was issued to the petitioner. He submitted his explanation and after hearing, the licence was cancelled. The licensing authority came to conclusion that the petitioner had committed breach of the license by permitting a third person to run the management of the hotel without prior permission. Taking into consideration the circumstances, no fault can be found with the procedure adopted by the licensing authority . It appears that the Appellate Authority also heard and after giving valid reasons dismissed the appeal against cancellation of licence. Taking into consideration the circumstances in which the license was cancelled, it is difficult to find any fault or illegality in the impugned order.

7. For the aforesaid reasons, writ petition stands dismissed. Rule discharged.

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[J.H.BHATIA, J.]